

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.200 of 2014

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Kanchan Devi @ Kanchan Kumar & Ors.

.... Appellant/s

Versus

Upendra Dubey & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arbind Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 01-09-2016 Heard Mr. W.Rahman, learned Counsel appearing for the Appellants in the Interlocutory Application (I.A. No. 5772 of 2014), which has been filed for condonation of delay of three years one month and eighteen days in filing this Second Appeal.

It has been emphatically submitted by the learned Counsel for the appellants that notice may be issued to the respondents in the matter as the appellants are downtrodden persons and there is every chance that they will be dispossessed from the suit property through the process of execution. It has also been contended that the appellants have very good chance of success in this appeal and the appellate court below has committed error of record in passing the impugned judgment. The learned Counsel also placed some parts of the judgment of the appellate court below in order to persuade this Court to take a view that the appellate court below had not properly considered the documentary evidence on record.

After considering the submission and perusal of the averments made in the limitation petition (I.A. No. 5772 of 2014), it transpires that the present appellants were defendants in the suit



which was filed by the plaintiffs for declaration of title and recovery of possession. The trial court decreed the suit and thereafter the appeal preferred by the defendants has also been dismissed. The appellants have averred in para 3 of the limitation petition that the present appeal has been filed after a long delay of three years six months due to various compelling emergent difficulties and problems. It was further averred that the appellants are very poor persons and they could not manage money to file the appeal within time and also because family members of the appellants were suffering from various disease. It does not, however, appear that any statement has been made in the limitation petition that the appellants had no knowledge of the judgment and decree passed by the appellate court below and there is no averment or statement that the appellants made any effort after passing of the impugned judgment and decree to prefer appeal within the prescribed period of limitation. The averments therefore demonstrate that the appellants did nothing for more than three years after passing of the judgment and decree by the appellate court below for preferring the appeal before this Court.

In view of the principles and guidelines by their Lordships in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649***, the distinction has been drawn between the inordinate delay and the delay of few days and in case of the former strict view is to be taken. Even otherwise also, the limitation is statute of repose and this Court is not satisfied that sufficient cause has been made out on behalf of the appellants for

condonation of delay in filing this appeal for more than three years.

In the result the limitation petition (I.A. No. 5772 of 2014) is dismissed. Consequently, this Second Appeal is also dismissed as barred by limitation.

(V. Nath, J.)

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